

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of the subscriber Carrier
Selection Changes Provisions of the
Telecommunications Act of 1996

OnePoint Communications Corporation
and Talk.Com, Inc. and Talk.Com
Holding Corp. Joint Petition for
Waiver of the Subscriber Carrier Selection
Change Provisions of the
Telecommunications Act of 1996

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CC Docket No. 94-129

**JOINT PETITION FOR WAIVER OF ONEPOINT COMMUNICATIONS CORP.
AND THE PHONE COMPANY, INC.**

I. REQUEST FOR RELIEF

OnePoint Communications Corp. ("OnePoint") and Talk.com, Inc and Talk.Com Holding Corp., ("Talk.com"), (collectively, "Carriers") pursuant to Section 1.3 of the Federal Communications Commission's ("Commission") rules,¹ respectfully request that the Commission grant a limited waiver of the authorization and verification requirements of the Commission's carrier-change rules, 47 C.F.R. Sections 64.1100 through 64.1190,² and relevant Orders,³ to the

¹ See 47 C.F.R. § 1.3.

² The Commission's verification rules prohibit a telecommunications carrier from submitting a preferred carrier-change order unless certain criteria have been met. See 47 C.F.R. § 64.1150.

³ See *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long*

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extent necessary to permit Talk.com to be substituted as the interLATA and international toll service carrier for OnePoint's current customers in Maryland, Virginia, Pennsylvania, Delaware, and Washington, DC.

As demonstrated below, enforcement of the Commission's "slamming" rules under these unique circumstances would be contrary to the public interest, and could cause service interruptions, customer inconvenience, and economic harm. The Carriers believe that waiver of the Commission's carrier-change rules in this instance is justified by the good cause standards established by the Commissions' Rules, 47 C.F.R. § 1.3, and by *WAIT Radio v. FCC*.⁴

II. BACKGROUND

Ventures in Communications II, L.L.C. ("Ventures") is the corporate parent of a number of operating subsidiaries that provide different telecommunications services to the public. OnePoint, a subsidiary of Ventures, is a provider of local and long distance telephone service, video service, and high-speed Internet access to apartment and condominium (Multiple Dwelling Units or "MDUs") residents. This Petition is being filed in preparation for the proposed acquisition of OnePoint by Verizon Investments, Inc. ("VII"), a wholly-owned subsidiary of Bell Atlantic Corporation d/b/a Verizon Communications ("Verizon"). As a result of this acquisition, OnePoint will become subject to the regulatory requirements that prohibit Verizon from offering

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Distance Carriers, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd. 1508 (1998), appeal in abeyance sub nom. *MCI WorldCom, Inc. v. FCC*, No. 99-1125 (D.C. Cir.).

⁴ *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), cert. Denied, 409 U.S. 1027 (1972).

originating interLATA services in its local service region until it has met the requirements of Section 271 of the Telecommunications Act of 1996.⁵

Pursuant to this transaction, OnePoint will undertake a multi-step notification process to inform present customers that OnePoint will no longer be their long distance carrier, and that they must select a new long distance carrier. Specifically, before the acquisition is final, OnePoint will mail to each customer up to three separate notifications to ensure that they are fully informed of the need to choose a new long distance carrier.⁶ As the notifications indicate, OnePoint is making available three separate and convenient channels through which its customers can select their new long distance carrier: via the Internet, by mail, or by calling a toll free number answered by a OnePoint representative who will personally assist the customer with the carrier change transaction.

Although OnePoint believes that providing multiple notifications and three carrier selection channels will motivate and enable its customers to quickly and conveniently choose a new long distance carrier, some customers may nevertheless fail to make their selection in a timely manner. In order to ensure that these customers do not suffer any service interruptions, OnePoint has arranged to transfer to Talk.com any remaining OnePoint long distance customers. Talk.com has committed to provide long distance service to those customers on the same, or

⁵ See 47 U.S.C. § 271.

⁶ See Attachment A.

better, rates, terms, and conditions that OnePoint currently offers. Moreover, these subscribers will at all times remain free to switch to any other competing service provider, at no cost.⁷

To minimize the inconvenience and further intrusion upon transferred subscribers, however, OnePoint and Talk.com seek permission to refrain from obtaining specific authorization from each customer transferred to Talk.com. It would be impracticable to suspend the acquisition pending approval by each affected consumer, and OnePoint and Talk.com do not wish to cause a service interruption for any customers who fail to return a carrier or change authorization prior to the closing date. Therefore, OnePoint and Talk.com seek waiver of the Commission's authorization and verification rules which require carriers to obtain subscriber authorization prior to effecting a change to a subscribers' service provider selection.⁸ In this situation, enforcement of the Commission's authorization and verification rules would serve no constructive purpose, but would burden consumers and the Carriers with unnecessary delay, confusion, and potentially, service disruption.

III. GOOD CAUSE AND SPECIAL CIRCUMSTANCES WARRANT A WAIVER

Section 1.3 of the Commission's rules permits the Commission to waive any provision of its rules upon "good cause shown."⁹ Under well-established precedent, the Commission may waive its rules if "special circumstances warrant a deviation from the general rule and such

⁷ OnePoint will waive any charges associated with a customer's transition to a new carrier, including any charges for removing the customer's presubscribed carrier selection (PIC restriction) or any toll restrictions.

⁸ See 47 C.F.R. § 64.1100(a).

⁹ 47 C.F.R. § 1.3

deviation will serve the public interest."¹⁰ In considering a waiver petition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy.¹¹ In addition, the waiver should be consistent with the principles underlying the rule for which the waiver is requested.¹² Based on these criteria, the Commission should waive its authorization and verification rules in response to this Petition.

Pursuant to the Commission's rules, Talk.com appears to be a "submitting carrier" with respect to subscribers transferred from OnePoint to itself. Submitting carriers are required to verify all preferred carrier change orders before such changes can be executed.¹³ Strict adherence to the rules in these circumstances would yield no benefit to the public interest, and could actually be detrimental, by risking long distance service disruptions, stranding certain customers, or delaying consummation of the transaction.

In particular, the public interest favors grant of a waiver under these circumstances. This transaction will provide OnePoint with an infusion of capital necessary for continuation of its operations and expansion of business. The transaction will substantially benefit residential consumers who live in apartment buildings by providing OnePoint with the means necessary to

¹⁰ *Northeast Cellular Tel. Co., L.P. v. FCC*, 897 F.2D 1164 (D.C. Cir. 1990).

¹¹ See Federal-State Joint Board on Universal Service, CC Dkt No. 96-45, *Memorandum Opinion and Order and Seventeenth Order on Reconsideration*, FCC 99-280 (rel. Oct. 13, 1999), at ¶ 28.

¹² See *United States Telephone Association Petition for Waiver of Part 32 of the Commission's Rules*, Order, 13 FCC Rcd 214, 215 (1997).

¹³ See 47 CFR § 64.1100(a)(1) ("No carrier shall submit a change on behalf of a subscriber prior to obtaining [authorization and verification]"); 47 CFR § 64.1150 ("No carrier shall submit a preferred carrier change order unless and until the order has first been confirmed in accordance with one of the following [verification] procedures...").

remain a robust competitor providing service to this sector of the consumer telecommunications market. Requiring that Talk.com obtain verifiable authorization from each of OnePoint's subscribers before commencing service would substantially interfere with this transaction, cause a prolonged period of uncertainty, and potentially cause economic harm to the Carriers. At a minimum, enforcement of the rules under these circumstances will prevent the Carriers from executing their plan to ensure that no current customer will have their long distance service interrupted.

In a number of prior Orders, the Commission (or the Common Carrier Bureau through delegated authority) found that granting similar waivers served the public interest.¹⁴ Here, as in these prior instances, adequate consumer notification is assured, and consumers remain free to change long distance providers at any time, at no cost.

Finally, strict adherence to the Commission's authorization and verification rules under the unique circumstances of this case would be contrary to the public interest because this situation arises from the coincidence of two aspects of the Commission's pro-consumer regulations. The Commission's authorization and verification rules were designed to protect

¹⁴ See *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Citizens Utilities Company [and] U S WEST Communications, Inc. Joint Petition for Waiver*, CC Docket No. 94-129, Order, DA 00-1584 (rel. July 14, 2000); *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; International Exchange Communications, Inc. Request for Waiver*, Order, 14 FCC Rcd. 15268, 15269-70, at ¶ 4 (1999) (waiver granted to allow transfer of customer base pursuant to asset purchase agreement with another carrier); and citing to *WAIT Radio v. FCC*, 418 F.2d at 1159; *id.* At 15270, at ¶ 5 (granting a waiver in conjunction with the purchase of carrier's assets); *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Iowa Telecommunications Services Petition for Waiver*, CC Docket No. 94-129, Order, DA 99-2777, (rel. Dec. 21, 1999) (waiver granted to allow change of the preferred carrier of consumers currently presubscribed to another carrier); *In the Matter of Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; MCI WorldCom, Inc. Request for Waiver*, Order, 14

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consumers from anti-competitive acts. The Commission's Section 271 rules were designed to benefit consumers by fostering competition. In this situation, OnePoint is caught between these two important policies. The Carriers believe that waiver of the authorization and verification rules will benefit the public interest by permitting the acquisition to conclude in a timely manner while eliminating the likelihood of stranding any long distance customers due to Section 271 requirements. Moreover, the Carriers emphasize that these customers are being provided with ample notice of the change, and may quickly, conveniently, and at no cost, choose another carrier.

IV. CONCLUSION

By granting this Petition, the Commission will ensure that the policy goals of the carrier-change rules are served without compromising the benefits associated with the commercially-reasonable alienation of property, the Commission's authorization and verification rules, and its Section 271 requirements, while ensuring that no customer incurs a service interruption by unwittingly failing to subscribe to a new long distance carrier. As we believe that grant of this Petition for Waiver will truly serve the public interest, OnePoint and Talk.com respectfully request that the Commission will find the granting of this Petition warranted.

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FCC Rcd. 12264 (1999) (waiver granted to allow transfer of customer accounts pursuant to purchase agreement with another carrier).

Respectfully submitted,

TALK.COM, INC. AND TALK.COM
HOLDING CORP.

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September 8, 2000

ONEPOINT COMMUNICATIONS

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Counsel to OnePoint Communications

ATTACHMENT A

Dear Customer,

As early as October 31, 2000, OnePoint Communications will no longer provide interstate long-distance service in your calling area. OnePoint Communications is merging with Verizon Communications and, as a result, will be subject to the regulatory requirements that prohibit Verizon Communications and its affiliates from providing interstate long-distance service within your calling area. However, OnePoint Communications will continue to provide local and local toll telephone service including features such as Call Waiting, Caller ID, and Voice Mail.

Select a Different Interstate Long-Distance Company Before October 31, 2000

You will need to select a different interstate long-distance company before October 31, 2000. There are several convenient ways for you to choose a new interstate long-distance company:

- Call the interstate long-distance company of your choice; or
- Go to www.onepointcom.com/ldchange to assist you in choosing a new interstate long-distance provider online; or
- Complete the enclosed business reply card and mail it back to OnePoint Communications; or
- Call 1-888-OnePoint (1-888-663-7646) and a OnePoint Communications' representative can help you make the change.

We have arranged for another interstate long-distance company - **The Phone Company** - that offers the same rates - to automatically become your interstate long-distance company if you have not selected a carrier before October 31, 2000, (pending regulatory approval). In order to ensure a smooth transition of your interstate long-distance service, you should remove any prescribed carrier selection (PIC restriction).

OnePoint Communications will waive any and all of its charges associated with transitioning your interstate long-distance service - including any early termination fees. This would include any charges for removing your prescribed carrier selection (PIC restriction) and for removing any toll restrictions.

Thank you for being a OnePoint Communications customer. We look forward to continuing to provide you superior local and local toll telephone service. If you have any further questions, please call 1-888-OnePoint (1-888-663-7646).

Important Regulatory Notice:

The Federal Communications Commission (FCC) will normally authorize this proposed discontinuance of service unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments within 15 days after receipt of this notification. Address them to the Federal Communications Commission, Washington, D.C., 20554, referencing application 63.71 of OnePoint Communications. Comments should include specific information on the impact of this proposed discontinuance upon you or your company, including any inability to acquire reasonable substitute service. The states affected by this change are Delaware, Maryland, Pennsylvania, Virginia, and Washington, D.C.

Please Act Now

As early as October 31, 2000, OnePoint Communications will no longer provide interstate long-distance service in your calling area. OnePoint Communications is merging with Verizon Communications and, as a result, will be subject to the regulatory requirements that prohibit Verizon Communications and its affiliates from providing interstate long-distance service within your calling area. However, OnePoint Communications will continue to provide local and local toll service including features such as Call Waiting, Caller ID, and Voice Mail.

We still have not heard from you since our first notification. Of course, if you recently responded, please disregard this request. If not, please take a minute to choose a new interstate long-distance company, using one of these three simple ways:

- Call the interstate long-distance company of your choice; or
- Go to www.onepointcom.com/ldchoice and choose a new interstate long-distance provider online; or
- Complete the enclosed business reply card and mail it back to OnePoint Communications; or
- Call 1-888-OnePoint (1-888-663-7646) and a OnePoint Communications representative can help you make the change.

Be sure you switch your interstate long-distance provider before October 31, 2000. We have arranged for another interstate long-distance company - **The Phone Company** - that offers the same rates - to automatically become your interstate long-distance company if you have not selected one before October 31, 2000, (pending regulatory approval). In order to ensure a smooth transition of your interstate long-distance service, you should remove any prescribed carrier selection (PIC restriction).

OnePoint Communications will waive any and all of its charges associated with transitioning your interstate long-distance service - including any early termination fees. This would include any charges for removing your prescribed carrier selection (PIC restriction) and for removing any toll restrictions.

Thank you for being a OnePoint Communications customer. We look forward to continuing to provide you with superior local and local toll telephone service. If you have any questions, please call 1-888-OnePoint (1-888-663-7646).

Important Regulatory Notice:

The Federal Communications Commission (FCC) will normally authorize this proposed discontinuance of service unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments within 15 days after receipt of this notification. Address them to the Federal Communications Commission, Washington, D.C., 20554, referencing application 63.71 of OnePoint Communications. Comments should include specific information on the impact of this proposed discontinuance upon you or your company, including any inability to acquire reasonable substitute service. The states affected by this change are Delaware, Maryland, Pennsylvania, Virginia, and Washington, D.C.

Time Is Running Out

Please Act Before October 31, 2000

As early as October 31, 2000, OnePoint Communications will no longer provide interstate long-distance service in your calling area. OnePoint Communications is merging with Verizon Communications and, as a result will be subject to the regulatory requirements that prohibit Verizon Communications and its affiliates from providing interstate long-distance service within your calling area. However, OnePoint Communications will continue to provide local and local toll telephone service including features such as Call Waiting, Caller ID, and Voice Mail.

Time is running out and we still have not heard from you. Of course if you recently responded, please disregard this request. If not, please choose a new interstate long-distance company today by:

- Calling the interstate long-distance company of your choice; or
- Going to www.onepointcom.com/ldchoice and choosing a new interstate long-distance company; or
- Calling 1-888-OnePoint (1-888-663-7646) and a OnePoint Communications' representative can help you make the change.

We have arranged for another interstate long-distance company - **The Phone Company** - that offers the same rates - to automatically become your interstate long-distance company if you have not selected a new one before October 31, 2000, (pending regulatory approval). In order to ensure a smooth transition of your interstate long-distance service, you should remove any prescribed carrier selection (PIC restriction).

OnePoint Communications will waive any and all of its charges associated with transitioning your interstate long-distance service, including any early termination fees. This would include any charges for removing your prescribed carrier selection (PIC restriction) and for removing any toll restrictions.

Thank you for being a OnePoint Communications customer. We look forward to continuing to provide you superior local and local toll telephone service. If you have any questions, please call 1-888-OnePoint (1-888-663-7646).

CERTIFICATE OF SERVICE

I, Mary W. Malone, do hereby certify that I have caused 1) the **forgoing JOINT PETITION FOR WAIVER OF ONEPOINT COMMUNICATIONS CORPORATION AND THE PHONE COMPANY** to be filed electronically with the FCC by using its Electronic Comment Filing System, 2) a copy of the **JOINT PETITION** to be served, via hand delivery, upon the persons/entity (marked with an asterisk) listed on the attached service list and 3) a copy of the **JOINT PETITION** to be service, via first class United States mail, postage prepaid, upon all other persons listed on the attached service list.

September 8, 2000

CERTIFICATE OF SERVICE

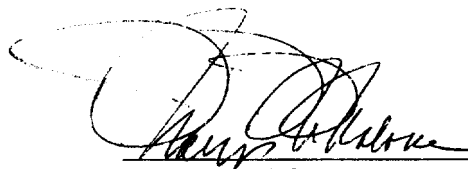
I hereby certify that a copy of the foregoing Petition for Waiver was delivered by messenger on this 8 day of September, 2000, to the following individuals:

Katherine Schroeder, Accounting Policy Division
Federal Communications Commission
445-12th Street, S.W.
Washington, D.C. 20554

Michele Walters, Accounting Policy Division
Federal Communications Commission
445-12th Street, S.W.
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and

Will Cox, Accounting Policy Division
Federal Communications Commission
445-12th Street, S.W.
Washington, D.C. 20554



Mary W. Malone